No. 91-194

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

QUILL CORPORATION,
Petitioner,
v.
STATE OF NORTH DAKOTA, BY AND THROUGH ITS TAX COMMISSIONER, HEIDI HEITKAMP,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of North Dakota

---

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL GOVERNORS' ASSOCIATION, COUNCIL OF STATE GOVERNMENTS, NATIONAL ASSOCIATION OF COUNTIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, NATIONAL LEAGUE OF CITIES, AND U.S. CONFERENCE OF MAYORS, JOINED BY THE MULTISTATE TAX COMMISSION, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

RICHARD RUDA *
Chief Counsel
MICHAEL G. DZIALO
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 349
Washington, D.C. 20001
(202) 638-1445
* *Counsel of Record for the* Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether North Dakota Cent. Code § 57-40.2-01 (Supp. 1991), which imposes the obligation to collect use tax on any retailer that "engages in regular or systematic solicitation of a consumer market" in North Dakota, violates the Commerce Clause or the Due Process Clause of the United States Constitution.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: Page

TABLE OF AUTHORITIES—Continued

Page

STATUTES AND REGULATIONS:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-194

QUILL CORPORATION,
Petitioner,

v.

STATE OF NORTH DAKOTA, BY AND THROUGH ITS TAX COMMISSIONER, HEIDI HEITKAMP,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of North Dakota

---

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL GOVERNORS' ASSOCIATION, COUNCIL OF STATE GOVERNMENTS, NATIONAL ASSOCIATION OF COUNTIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, NATIONAL LEAGUE OF CITIES, AND U.S. CONFERENCE OF MAYORS, JOINED BY THE MULTISTATE TAX COMMISSION, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

INTEREST OF THE *AMICI CURIAE*

Amici National Conference of State Legislatures, National Governors' Association, Council of State Governments, National Association of Counties, In-

ternational City/County Management Association, National League of Cities, and U.S. Conference of Mayors are organizations whose members include state, county, and municipal governments and officials throughout the United States. They and their members have a compelling interest in legal issues that affect state and local governments, including questions of taxing authority. They have accordingly filed *amicus* briefs in such recent tax cases as *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), *Goldberg v. Sweet*, 488 U.S. 252 (1989), and *D.H. Holmes Co. v. McNamara*, 486 U.S. 24 (1988).

Amicus Multistate Tax Commission ("MTC") is the official administrative agency of the Multistate Tax Compact. Eighteen States and the District of Columbia have entered into the Compact as full members; 14 States have joined the Compact as associate members. The MTC has a strong interest in tax disputes that affect the administration of state tax systems.[1]

This case involves a constitutional challenge to a North Dakota statute that imposes use tax collection obligations on any retailer that "engages in regular or systematic solicitation of a consumer market in [the] state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system." N.D. Cent. Code §57-40.2-01(6). At least 18 States besides

[1] This brief should not be read to reflect the views of any MTC member State, including but not limited to North Dakota, that files or joins a separate brief in this case.

North Dakota have enacted identical or substantially similar legislation expressly imposing use tax collection obligations on retailers solely on the basis of their economic presence in the State. In addition, at least 15 States have enacted other forms of use tax legislation that take account of the evolution of the direct marketing industry during the past two decades.

This Court's decision in *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), casts a shadow of uncertainty over current use tax collection efforts. This uncertainty has had debilitating fiscal consequences for many States and local governments at a time when they can ill afford a loss of tax revenue. *Amici* accordingly submit this brief to urge the Court to grant the petition for a writ of certiorari.[2]

SUMMARY OF ARGUMENT

The petition should be granted for three related reasons. First, the question of taxing authority presented is of profound fiscal importance. Second, at least 34 States have enacted use tax collection legislation that responds to the evolution in size and technological sophistication of the direct marketing industry. Third, challenges to these statutes have spawned litigation all over the country, the resolution of which depends on the Court's decision in *Bellas Hess*. This ongoing nationwide litigation has had directly conflicting results: the judgment of the North Dakota Supreme Court conflicts with the judgments of the Connecticut and Pennsylvania Supreme Courts.

[2] The parties' letters of consent have been filed with the Clerk pursuant to Rule 37.2 of the Court.

The North Dakota Supreme Court correctly recognized that because of the massive changes in direct marketing in the past quarter century, economic presence, like physical presence, may provide the basis for the assertion of state taxing authority. The Court's guidance on this pressing issue of national importance is urgently needed.

REASONS FOR GRANTING THE WRIT

I. THE QUESTION PRESENTED IS OF GREAT FISCAL IMPORTANCE

At least $2.2 billion in use tax revenue was lost in 1988 because of the failure to collect use tax on sales by direct marketers. *See* Advisory Commission on Intergovernmental Relations, *Estimates of Revenue Potential from State Taxation of Out-of-State Mail Order Sales* 8 (1987) ("ACIR Study").[3] Since 1988, annual revenue loss has steadily worsened. At least eighteen States have increased their sales and use tax rates in the past three years.[4] At the same time, retail sales via direct marketing have continued to mushroom; direct marketing retail sales to individual consumers increased from $48.3 billion in 1988 to $57.5 billion in 1990—an 18.9% increase in just two years.[5]

Revenue losses will substantially increase in the years ahead as direct marketers continue to exploit the latest technological developments and expand their market share of retail trade. The direct marketing technologies now coming on-line range from the familiar to the futuristic. Cheap, disposable "videologs", video cassettes that can be viewed on television in a consumer's home, cost retailers no more than printed catalogs. *See* Shani and Reyer, *Videologs: Will They Replace Catalogs?*, 3 Direct: The Magazine for Direct Marketing Management 33, 33-34 (August 1990). At the other extreme of technological sophistication is "interactive television," which allows for instantaneous two-way communication via television between a direct marketer and an in-home consumer. *See* Schell, *Welcome to the Era of Interactive TV*, 3 Direct: The Magazine for Direct Marketing Management 63, 63-4 (March 1991); Barney, *New Interactive TV System Receives FCC Approval*, 3 Direct: The Magazine for Direct Marketing Management 50 (March 1991).

As computers with high-resolution video displays become more widespread in American homes during

---

[3] The $2.2 billion figure in the ACIR Study almost certainly understates 1988 revenue losses. Among other things, it fails to take account of either the rapid growth in television direct marketing or the increase in state sales and use tax rates in 1988. *See* ACIR Study at 4-5.

[4] *See* M. Fabricius, *et al., State Budget Actions in 1989* 80-81 (National Conference of State Legislatures: 1989); C. Eckl, *et al., State Budget and Tax Actions 1990* 74-76 (National Conference of State Legislatures: 1990); C. Eckl, *et al., State Budget and Tax Actions 1991*, Appendix F at 9-11 (National Conference of State Legislatures: 1991).

[5] *Compare* A. Fishman, *1989 Guide to Mail Order Sales* I-8 (1989) *with* Fishman, *Mail Order Top 250*, Direct Marketing (July 1991) at 42.

These figures reflect only direct marketing sales of goods to individual consumers, not to businesses, and consequently substantially understate total annual direct marketing sales. To give just one illustration, most of Petitioner's annual sales of office supplies of more than $200,000,000 are to businesses, *see* Pet. App. 2-3, 29, and hence are not reflected in the direct marketing retail sales figures given above.

the next decade, the home shopping market will expand even further. This growth potential is illustrated by Prodigy, a nationwide, computer-accessed information network that is a joint venture between IBM and Sears. In just three years Prodigy has already obtained more than 700,000 subscribers. Fishman, *supra*, *Mail Order Top 250* at 40. Prodigy offers enormous direct marketing possibilities; even at this early stage more than 40 catalog merchants are on-line. *Id.*

The steady evolution of such technologies has, in recent years, greatly enhanced the pervasiveness of direct marketing, a trend that will inevitably continue. In response, hard-pressed States are under increasing pressure to modernize their use tax collection legislation to take account of the reality of the retail industry.

II. MANY STATES HAVE ENACTED USE TAX LEGISLATION THAT RESPONDS TO THE RECENT REVOLUTION IN RETAILING

"[T]he impracticability of [use tax] collection from the multitude of individual purchasers is obvious." *National Geographic Society v. Board of Equalization*, 430 U.S. 551, 555 (1977) (citing *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 343 (1954)). The resulting revenue losses have led to a proliferation of state legislation designed to capture this revenue by imposing use tax collection duties on direct marketers. "Since 1987, a movement has quietly developed among the states to challenge industry interpretations of the scope and applicability of *Bellas Hess* through the passage of state legislation." A. Morse & C. Zimmerman, *Efforts to Collect Sales Tax on Interstate Mail-Order Sales: Recent State Legislation* (National Conference of State Legislatures: 1990) at 1. At least 34 States currently have such laws.

Most of this legislation assumes one of two basic forms. Most common are statutes that, like the North Dakota law, require direct marketers to collect and remit use taxes if they regularly or systematically solicit sales in the State. *See* N.D. Cent. Code § 57-40.2-01 (Supp. 1991). At least 18 States in addition to North Dakota have statutes of this kind.[6]

---

[6] *See* Ariz. Rev. Stat. Ann. § 42-1401(5)(b) (1991) (solicitation by mail that is "substantial and recurring"); Ark. Stat. Ann. § 26-53-121(b) (Supp. 1989) ("continuous, regular, or systematic solicitation of retail sales"); Conn. Gen. Stat. Ann. §§ 12-407(12)(g) & (15)(e) (West Supp. 1990) ("regular or systematic solicitation of sales"); Fla. Stat. § 212.0596(2)(e) (Supp. 1990) ("purposefully or systematically exploiting the market provided by this state"); Ga. Code Ann. § 48-8-2(3)(H) (Supp. 1991) ("regular or systematic solicitation of a consumer market in this state"); Kan. Stat. Ann. § 79-3702(h)(2) (Supp. 1990) ("regular or systematic solicitation of sales"); La. Rev. Stat. Ann. § 47:301(4)(*l*) (West Supp. 1991) ("regular or systematic solicitation of a consumer market in this state"); Mass. Ann. Laws ch. 64H § 1 (Law. Co-op. 1991) ("regularly or systematically soliciting orders"); Minn. Stat. Ann. § 297A.21, subdiv. 4(a) (West Supp. 1991) ("regular or systematic soliciting of sales"); Mo. Ann. Stat. § 144.605(2)(a) (Vernon Supp. 1991) ("[p]urposefully or systematically exploiting the market provided by this state"); N.C. Gen. Stat. § 105-164.8(b)(5) (1989) (same); Okla. Stat. Ann. tit. 68, § 1354.1-.5 (West Supp. 1990) ("continuous, regular or systematic solicitation"); Pa. Stat. Ann. tit. 72, § 7201(b)(3) (Purdon 1990) ("[r]egularly or substantially soliciting orders"); R.I. Gen. Laws §§ 44-18-15(1)(E) & -23(c) (Supp. 1990) ("regular or systematic solicitation of sales"); Tenn. Code Ann. § 67-6-102(6)(J) (1989) ("regular or systematic solicitation of a consumer market in this state"); Utah Code Ann. §§ 59-12-102(9)(c) & (17)(b) (Michie Supp. 1991) (same);

Another form of legislation is typified by California's statute. Under the California law, a retailer is required to collect and remit use tax if its solicitations by mail are substantial and recurring, and if, in addition, the retailer benefits from such in-state institutions or activities as financial services, telecommunications, marketing activities, or authorized service facilities. *See* Calif. Rev. & Tax Code Ann. § 6203(f) (West Supp. 1991). Several States have enacted identical or similar legislation.[7]

Vt. Stat. Ann. tit. 32, § 9701(9)(F) (Supp. 1990) ("regular, systematic or seasonal solicitation of sales"); Wash. Rev. Code Ann. § 82.12.040 (Supp. 1991) & Wash. Admin. Code 458-20-221(2)(b)(i) (1989) ("[p]urposefully or systematically exploiting the market provided by this state").

Cf. Miss. Code Ann. § 27-67-3(j) (Supp. 1989) ("selling or taking orders . . . by mail"); N.J. Stat. Ann. § 54:32-2(i)(1)(C) (West 1991) ("solicits business . . . by distribution of catalogs"); N.M. Stat. § 7-9-10(A) (1990) ("attempting to exploit New Mexico's markets"); S.C. Code Ann. § 12-36-70(2)(b) (Law. Co-op. Supp. 1990) ("soliciting business . . . by distribution of catalogs").

[7] *See* Idaho Code § 63-3611(g) (1989) ("if the solicitations [by mail] are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities"); Ill. Rev. Stat. ch. 120, para. 439.2(4) (Supp. 1990) (same); Iowa Code Ann. § 422.43(12)(b) (West 1990) ("if the solicitations [by mail or otherwise] are continuous, regular, or systematic and if the retailer benefits" from specified in-state services); Ky. Rev. Stat. § 139.340(2)(c) (Michie/Bobbs-Merrill 1991) ("soliciting orders . . . on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or the payment for the order utilizes the services of any financial institution, telecommunication system, radio or television station, cable television service,

Whatever its precise form, this legislation reflects the efforts of the States to modernize their use tax collection legislation to conform to changes in the

---

print media, or other facility or service located in this state"); Neb. Rev. Stat. § 77-2702(21)(e) (1990) ("if the solicitations [by mail] are continuous, regular, seasonal, or systematic and if the retailer benefits" from specified in-state services); Nev. Rev. Stat. Ann. § 372.728(6) (1989) ("if the solicitations [by mail or electronic facsimile] are substantial and recurring and if the retailer benefits" from specified in-state services); Ohio Rev. Code Ann. § 5741.01(H) & (3) (Anderson Supp. 1990) ("Nexus with this state exists" for solicitations by mail "only if the seller also benefits" from specified in-state services); Tex. Tax Code Ann. § 151.107(a)(5) (Vernon Supp. 1991) ("if the solicitations [by mail] are substantial and recurring and if the retailer benefits" from specified in-state services); Va. Code Ann. § 58.1-612(b)(6) (1991) ("if the solicitations [by mail] are continuous, regular, seasonal, or systematic and if the dealer benefits" from specified in-state services); W. Va. Code § 11-15A-6a(a)(3) (Supp. 1991) ("if the solicitations [by mail] are substantial and recurring and if the retailer economically benefits" from specified in-state services).

Several of the foregoing statutes also create use tax collection obligations if the retailer, for example, (1) solicits orders by television shopping systems or pursuant to a contract with an in-state broadcaster, publisher, or cable-television operator; (2) is owned or controlled by the same interests that own or control in-state retailers in the same or similar business; or (3) has a franchisee, required to collect tax, that operates under the retailer's trade name. *See* Calif. Rev. & Tax Code Ann. § 6203(d)-(e) & (g)-(i) (West Supp. 1991). *See also* Idaho Code § 63-3611(e)-(f) & (h)-(j) (1989); Ill. Rev. Stat. ch. 120, para. 439.2(2)-(3) & (5)-(7) (Supp. 1990); Iowa Code Ann. § 422.43(12)(c)-(d) (West 1990); Neb. Rev. Stat. § 77-2702(21)(f)-(g) (1990); Nev. Rev. Stat. Ann. § 372.728(4)-(5) & (7)-(9) (1989); Ohio Rev. Code Ann. § 5741.01(H)(1) & (6) (Anderson Supp. 1990); Tex. Tax Code Ann. § 151.107(a)(7) (Vernon Supp. 1991); Va. Code

size and sophistication of direct marketing. These laws are intended not only to capture the vast use tax revenues that are owed by state residents and would otherwise be lost, but also fairly and equitably to distribute tax burdens among consumers and to level the playing field for retailers. The validity of these laws turns largely on the vitality of *Bellas Hess*, as is demonstrated by this case and other recent litigation.

III. THE ONGOING LITIGATION EXPLOSION HAS LED TO CONFLICTING AND CONFUSING RESULTS

Given the uncertainty in the law, the enforcement of state legislation imposing use tax collection obligations on direct marketers has given rise to legal challenges all over the country, particularly in those States that are most actively enforcing use tax collection laws. In addition to the North Dakota litigation that is the subject of this petition, challenges to laws imposing use tax collection obligations have already been mounted in the following States.

Connecticut. In two recent cases the Connecticut Supreme Court has construed *Bellas Hess* to invalidate the State's attempts to impose use tax collection obligations on direct marketers with substantial sales to Connecticut residents where the retailers are found to lack physical presence.[8] The judgments of the Connecticut Supreme Court are in direct con-

Ann. § 58.1-612(C)(7)-(8) (1991); W. Va. Code § 11-15A-6a(a)(1), (4)-(5) (Supp. 1991).

[8] *SFA Folio Collections, Inc. v. Bannon*, 217 Conn. 220, 585 A.2d 666, *cert. denied*, 111 S.Ct. 2839 (1991); *Cally Curtis Co. v. Groppo*, 214 Conn. 292, 572 A.2d 302, *cert. denied*, 111 S.Ct. 77 (1990).

flict with the judgment of the North Dakota Supreme Court on the issue of the indispensability of physical presence. *Compare SFA Folio Collections, Inc. v. Bannon*, 217 Conn. at 236 & n.12 ("some degree of physical presence . . . is constitutionally required") *with* Pet. App. 25 ("Quill's asserted lack of physical presence is not fatal to the State's attempt to require Quill to collect and remit use tax").

Pennsylvania. In 1986 and again in 1989 the Pennsylvania Commonwealth Court held that the *Bellas Hess* physical presence requirement invalidated Pennsylvania's efforts to impose use tax collection obligations on out-of-state direct marketers; on June 4, 1991, the Pennsylvania Supreme Court affirmed the latter holding.[9] The Pennsylvania Supreme Court's judgment is in direct conflict with the judgment of the North Dakota Supreme Court on the physical presence issue. On September 3, 1991, Pennsylvania filed a petition for certiorari seeking review of the judgment of the Pennsylvania Supreme Court.[10]

Tennessee. The Tennessee use tax statute, which is substantially the same as the North Dakota statute, has recently been challenged by direct marketers in more than twenty state court proceedings. Two of these cases have thus far resulted in adjudications upholding the constitutionality of the statute in the face of the plaintiff's reliance upon *Bellas Hess*.[11]

[9] *L.L. Bean, Inc. v. Pennsylvania Dept. of Rev.*, 516 A.2d 820 (Pa. Commw. Ct. 1986); *Bloomingdale's by Mail, Ltd. v. Pennsylvania Dept. of Rev.*, 567 A.2d 773 (Pa. Commw. Ct. 1989), *aff'd mem.*, 591 A.2d 1047 (Pa.), *petition for cert. filed*, No. 91-—— (U.S. Sept. 3, 1991).

[10] *See* footnote 9, *supra*.

[11] *Bloomingdale's by Mail, Ltd. v. Huddleston*, No. 89-3017-II (Ch. Ct., March 8, 1991), *appeal filed*, No. 01-S01-9016-

California. Two months ago the federal district court entered summary judgment on the basis of *Bellas Hess* in favor of a trade association of direct marketers in a challenge to the California use tax statute brought under 42 U.S.C. 1983.[12] Direct marketers have also prevailed thus far in two pending state court challenges to the California statute.[13]

Texas. A direct marketing firm recently filed suit for declaratory and injunctive relief against Texas's effort to require it to collect the state use tax pursuant to the Texas use tax statute.[14]

Wisconsin. In a ruling now on appeal, the Wisconsin Tax Appeals Commission, citing *Bellas Hess*, held that the State may not impose use tax collection duties on a direct marketer of computer software that retains ownership of the magnetic tapes

---

CH-0047 (Tenn., Apr. 19, 1991); *SFA Folio Collections, Inc. v. Huddleston*, No. 89-3015-III (Ch. Ct., Mar. 11, 1991).

The appeal in *Bloomingdale's by Mail* has been fully briefed and is set for argument in the Tennessee Supreme Court on October 3, 1991. The remaining Tennessee cases are being held in abeyance in the chancery court pending a ruling either by this Court or by the Tennessee Supreme Court.

[12] *Direct Marketing Ass'n, Inc. v. Bennett*, No. Civ. S-88-1067 (E.D. Cal., June 28, 1991) [reproduced in Pet. App. at A67-A73].

[13] *Land's End, Inc. v. State Board of Equalization*, No. 620135 (Cal. Super. Ct., Jan. 18, 1991), *appeal filed*, No. D14839 (Cal. Ct. App., July 10, 1991); *Sturbridge Yankee Workshop, Inc. v. State Board of Equalization*, No. 512584 (Cal. Super. Ct., Jan. 29, 1991); *appeal filed*, No. C011169 (Cal. Ct. App., May 28, 1991).

[14] *Renovator's Supply, Inc. v. Sharp*, No. 91-9493 (Tex. Dist. Ct., filed July 5, 1991).

on which it sends computer programs to in-state consumers.[15]

Ohio. A direct marketer has appealed to the Ohio Board of Tax Appeals from the Ohio Tax Commissioner's determination to require it to collect use tax. According to the direct marketer, *Bellas Hess* precludes Ohio from imposing such tax collection duties.[16]

IV. THIS COURT'S GUIDANCE IS URGENTLY NEEDED

The collection of use taxes is a pressing matter of immense practical importance. Its significance has increased steadily because of the exponential growth, both in size and sophistication, of direct marketing during the past 25 years. A leading academic authority on this issue has persuasively argued that the sea changes in the retail industry require a corresponding evolution in legal doctrine beyond that currently embodied in *Bellas Hess*. As this case illustrates,

> [b]enefits from the taxing state that are unrelated to physical contact with the state may be of vastly greater significance than those derived from the presence of a whole swarm of the out-of-state sellers' agents soliciting business. Practically speaking, some physical presence within the state in furtherance of a business purpose

---

[15] *B.I. Moyle Assoc., Inc., v. Wisconsin Dept. of Revenue*, No. 87-S-141 (Wisc. Tax App. Comm'n, Dec. 12, 1990), *petition for review filed*, No. 91-CV-0127 (Wisc. Cir. Ct., Jan. 11, 1991). The appeal has been fully briefed and awaits oral argument.

[16] *SFA Folio Collections, Inc. v. Tracy*, No. 91-295 (Ohio Bd. of Tax App., appeal filed Mar. 8, 1991), appeal from *SFA Folio Collections*, No. 910002000 (Ohio Tax Comm'r, Feb. 8, 1991).

is not essential to the existence of a meaningful nexus with the state.

Hartman, *Collection of the Use Tax on Out-of-State Mail-Order Sales*, 39 Vand. L. Rev. 993, 1014 (1986), *quoted in* Pet. App. 32. *See also* P. Hartman, *Federal Limitations on State and Local Taxation* 631 (1981).

Given the transformation of the retail industry in the past quarter century, an authoritative ruling on the vitality of *Bellas Hess* is essential. This is more than simply a matter of tax revenue lost. A principal purpose of the use tax—to "put local retailers subject to the sales tax on a competitive parity with out-of-state retailers exempt from sales tax", *National Geographic*, 430 U.S. at 355—is totally frustrated by Petitioner's reading of *Bellas Hess*. Additional unfairness results because Petitioner and other direct marketers would readily leave the burden of tax collection "to be shouldered entirely by the local competition, which cannot escape the responsibility to collect and remit the state sales tax." Hartman, *supra*, 39 Vand. L. Rev. at 1013. Not least, the failure to collect use tax "subverts the most effective available method for bringing about equality of taxation between residents who buy locally and those who buy from tax-exempt foreign mail order sellers." *Id.* The Court's guidance on the question presented is therefore urgently needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD RUDA *
Chief Counsel
MICHAEL G. DZIALO
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 349
Washington, D.C. 20001
(202) 638-1445
* *Counsel of Record for the* Amici Curiae

September 4, 1991